

SPECIAL CIVIL APPLICATION NO. 157 OF 1997.

Date of decision: 8.5.1997

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. J.R. Nanavati, advocate for petitioners.

Ms. Harsha Devani, A.G.P. for respondents.

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Coram: R.R.Jain,J.

May 8, 1997.

Oral judgment:

Heard Mr. Nanavati, learned advocate for the petitioners and Ms. Harsha Devani, learned A.G.P. for respondents.

Aggrieved by the order dated 18.9.1996 passed by the Land Ceiling Tribunal confirming the order passed by the Competent Authority declaring excess land, the petitioners have filed this petition under Articles 226/227 of the Constitution of India.

The petitioners have challenged the order on various grounds. One of the main grounds of challenge is that the Competent Authority while considering the form considered holding as per preliminary scheme as 14696 sq.mts. However, thereafter scheme has been sanctioned and the petitioners' holding has been finalised as 17800 sq.mt. In view of this change, entire process will have to be reconsidered.

It is also contended that the Competent Authority has committed a clerical error in considering the holding and the same is also supported by the observations made by the Competent Authority in an order passed on 3.5.1997 in pursuance of an interim order passed by this Court on 7.4.1997. Thus the contention raised by the petitioners get corroborated by the interim order of the Competent Authority. Under these circumstances, it is a fit case wherein the matter should be remanded for reconsideration on merits including the constructed area and the marginal land as per law.

In the result, the petition is allowed. The impugned orders, Annexures A and B passed by the competent authority and Urban Land Tribunal respectively are hereby quashed and set aside. The matter is remanded to the Competent Authority for fresh consideration on merits, keeping in mind the constructed area, marginal land and variation in holding owing to Town Planning Scheme. The Competent Authority is directed to dispose of the matter in accordance with law within four months from the date of receipt of writ from this Court. Rule is made. No order as to costs.